

concrete work
denied
gave notice

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31035
Docket No. MW-30327
95-3-92-3-56

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (James E. Simon Co.) to perform concrete work (prepare surfaces, constructing and installing forms, pour and finish concrete and stripping forms) involved with the construction of three (3) concrete pads for waste oil tanks at North Platte, Nebraska on July 17, 18, and 19, 1990 (System File S-392/910026).
- (2) The Agreement was further violated when the Carrier did not afford the General Chairman a meeting to discuss the work referred to in Part (1) above, prior to the contracting out of said work, as contemplated by Rule 52(a).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Foreman K. E. Peterson, Machine Operator L. J. Lashley and B&B Carpenters J. L. Jones, D. W. Douglas and J. A. Meyer shall each be allowed '*** compensation for the loss of work opportunity suffered in an amount equal to an equal proportionate share of the total man-hours worked by the outside contracting force on July 17, 18 and 19, 1990.'"

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

By notice dated June 6, 1990, the Carrier notified the Organization as follows:

"This is to advise of the Carrier's intent to solicit bids to cover the furnishing of the necessary labor, supervision, materials, tools, supplies, permits and asphalt tank foundation pads with curbing, at the Railroad's facility in North Platte, Nebraska.

This work is being performed under that provision of the Agreement which states 'Nothing contained in this rule shall affect prior and existing rights and practices of either party in connection with contracting out.'

Serving of this 'Notice' is not to be construed as an indication that the work described above necessarily falls within the 'scope' of your Agreement, nor as an indication that such work is necessarily reserved, as a matter of practice, to those employees represented by the BMWE."

The Organization did not immediately and unconditionally request a conference. Instead, by letter dated June 15, 1990, the Organization requested a more detailed notice. The request for a conference in that letter was conditioned "[p]rovided you refuse to offer this vital information in a timely manner."

By letter dated June 19, 1990, the Carrier responded that:

"... this project involves the grading and soil compaction of a 16 by 20 foot area. After the soil is prepared, a 6-inch thick, 16 foot by 20-foot asphaltic concrete pad will be installed. The pad will then be surrounded with a one-foot high and two-foot thick curbing. The pad will be used to hold a 12,000 gallon steel used oil storage tank.

If additional information is desired please so advise."

By letter dated July 6, 1990, the Organization objected to the Carrier's subcontracting of the work and requested a conference to be held prior to the commencement of the work.

By letter dated July 17, 1990, the Carrier responded to the Organization's objections and expressed a willingness to meet in conference stating "Please arrange to include these cases on the agenda for handling at our next conference on contracting notices."

Conference was held on August 3, 1990 with the matter remaining unresolved.

The contractor commenced the work on July 17, 1990.

With respect to the Carrier's ability to contract out the kind of work involved in this dispute, this issue has been previously decided between these parties. See e.g., Third Division Awards 28623, 29310, 30262, 30287. Those Awards are not palpably erroneous and, in the interest of stability, they will be followed.

With respect to the notice question, we note that on June 6, 1990, the Carrier gave the Organization notice of its intent to contract out the work. Rather than immediately and unconditionally requesting a conference, the Organization on June 15, 1990 requested a more detailed notice, to which the Carrier gave timely response on June 19, 1990. Over two weeks later, on July 6, 1990, the Organization, for the first time, specifically and unconditionally requested a conference. The conference of August 3, 1990 was held after the work began on July 17, 1990. However, what is significant is that although the work began on July 17, 1990, before the conference was held, that date was 41 days after the first notice was given and 31 days after the second notice was given. Under these particular circumstances, we cannot say that the Carrier did not give the Organization adequate opportunity to request and schedule a conference prior to the commencement of the work. See Third Division Award 30287, supra.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.